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Viet Nam's Comments to the Unedited Copy of the Report of the Special Rapporteur in the Field of Cultural Rights

Addendum

Visit to Viet Nam (18 – 29 November 2013)

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Preamble

1. The Government of Viet Nam is very much appreciative of the 18-29 November 2013 visit to Viet Nam by Ms. Farida Shaheed, the Special Rapporteur (SR) in the field of cultural rights. The visit was a good opportunity for the Government of Viet Nam and the SR to conduct open dialogues on practices of cultural rights of the Vietnamese people in the spirit of cooperation. During the visit, the SR had chances to meet with the representatives of the central and local governments' institutions, social and political organizations, cultural associations and establishments; schools in cities, mountainous and remote areas and regions of ethnic minority peoples; artists, scholars and individuals, etc., to better understand the policies, efforts, accomplishments and challenges of Viet Nam in its protection and promotion of cultural rights.

2. During her visit, the SR met with the representatives of the Ministry of Foreign Affairs, Ministry of Culture, Sports and Tourism, Ministry of Education and Training, Ministry of Information and Telecommunication, Government's Committee on Religious Affairs, Committee on Ethnic Minorities' Affairs, Central Committee on Communication and Education, National Assembly's Ethnic Minorities Council, Committee on Culture, Education, Youths, Teenagers and Children, General Department of Population and Family Planning, Viet Nam Women's Union, departments and agencies of Ho Chi Minh City, Quang Nam and Lao Cai provinces. Besides, the SR also visited and met with the Institute of Linguistics, Education Publishing House, Ha Noi Association of Literature and Arts, Veterans' Association, Museum of Ethnology, Le Quy Don Upper-secondary School (Ho Chi Minh City), Sa Pa Ethnic Minorities' Boarding School, villages of Gie Trieng and Co Tu ethnic peoples in Nam Giang and Dong Giang districts, Quang Nam province.

3. The Government of Viet Nam applauds some of the assessments and recommendations of the SR. However, some others were inadequate and inaccurate about the reality of Viet Nam. Viet Nam understands that with a visit only lasting for 11 days, it is quite hard for the SR to outline an overall picture of the realization of cultural rights in "a country of great cultural diversity" like Viet Nam (Para 17). Viet Nam would like to reiterate its consistent policy to respect and protect all fundamental human rights and freedoms, including cultural rights, in compliance with international standards. All plans and policies of the Government of Viet Nam are designed to serve its citizens and for its citizens, especially the vulnerable groups such as women, children, the poor, people with disabilities and ethnic minorities. This is clearly stipulated in the National Constitution and laws, guaranteed by mechanisms, policies and practices.

I. First, the Government of Viet Nam welcomes the SR's positive assessments of Viet Nam's policies, efforts and accomplishments in its protection of cultural rights, particularly at a time when Viet Nam is undertaking a comprehensive reform.

4. The report noted "Viet Nam has made remarkable progress towards achieving the Millennium Development Goals and realizing a range of economic, social and cultural rights" (Para 18). In particular, considerable efforts are underway to enlarge access of people to education and culture, including in rural areas and remote regions.

5. The report reflected "the substantive debate" with "more than 26 million comments" (Para 7) on the 2013 Constitution; recognized that "Civil, political, economic, social and cultural rights are included, in particular rights of significant importance in the field of

culture, such as freedom of expression, freedom of religion, and the rights to education, to engage in artistic creation and to participate in cultural life" (Para 10).

6. The report noted "there is more space for the enjoyment of artistic freedoms in Viet Nam" (Para 34), "the Government has adopted a number of measures to support artists, has allowed a wider participation of private business actors in cultural life, widening the sources of artistic production" (Paras 34 and 38).

7. The report emphasized "the Government is conscious of the need to protect and safeguard cultural heritage" (Para 62), "the Government has adopted steps to retrieve, select or develop minority scripts in consultation with the relevant communities" (Para 77) and "The Government encourages different groups to use and preserve their language" (Para 81). The SR recognized the responsibility and effort of the State in adopting policies that provide land to ethnic minorities for residences and community activities; welcomed the Government's support for development programs in Central Highlands and establishing training programs to build the capacity of local communities for the tourism industry to ensure that they can access and benefit from this new market.

II. In the spirit of dialogue and cooperation, and in order to sharpen the panorama of cultural rights in Viet Nam, the Vietnamese Government would like to provide clarifications on several inaccurate assessments in the report:

8. Paras 9 and 19: The SR commented on the role of the Communist Party of Viet Nam as well as the political system of the country in ensuring cultural rights. This does not fall within the mandate of the SR as prescribed in UN HRC Resolution 10/23 in 2009 and is also not compatible with Article 1(1) of the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of all nations to freely determine their political status.

9. Para 11: Assessment of the SR on Article 15(4) of the 2013 Constitution and "the undefined and broad reference to "national interest" raises concerns as possibly allowing restrictions to human rights beyond international standards" does not reflect the reality. The national interests of Viet Nam are, in essence, the interests aligned with sovereignty, territorial integrity, social and political stability, cultural and historical identity of Viet Nam, which aim at promoting the development of the society and human rights, including cultural rights. Therefore, akin to all other countries, national interests represent the core that every government agency, organization and citizen has the responsibility to respect and protect.

10. Para 15: "The authorities themselves reportedly do not respect the legal framework in place". This assessment is subjective and not based on verified evidence. The authorities are those who provided direct inputs to the law-making process and have the responsibility to seriously observe and implement the laws in Viet Nam. However, similar to other developing countries, there remains much to be done by Viet Nam to improve and complete the rule-of-law state.

11. Paras 20 and 21: Citation of one or two cases to conclude that "the judicial system seems to be absent in the governance architecture concerning the implementation of cultural rights" and that "people do not dare approach the court and few believe the judiciary is independent" is groundless and biased. The State of Viet Nam, including the courts and judicial system, has been working constantly to promote and protect the enjoyment of cultural rights of the people. Article 41 of the Constitution states that "Everyone has the right to enjoy and have access to cultural values, participate in cultural

life, and use cultural facilities"; and according to Article 60, "1/ the State and the society shall devote to developing a Vietnamese culture that is advanced, rich in national identity, and absorbing the quintessence of humankind cultures. 2/ The State and the society shall develop the culture and arts to meet the diverse spiritual demands of the People. 3/ The State and the society shall build an environment that enables Vietnamese families to enjoy welfare, and to be progressive and happy; and also enables Vietnamese people to be healthy, cultural, patriotic, and has a sense of solidarity, ownership, and citizen's responsibility". The Constitution and the Law on Criminal Proceedings provide for the right to counsel, the right to choose defendant lawyers as well as the independence of the court in trials. The media has covered numerous trials, including those concerning government agencies and those that are related to film, art works.

12. Para 32: The term "Khmer Krom" should be replaced by "Khmer people in the Mekong Delta" since the term "Krom" is aligned with separatism of a small portion of the Khmer population; the term "Montagnards" should also not be used in the report as "Montagnards" is not found in the list of the 54 ethnic groups of Viet Nam. The term was used by the French colonialists to refer to ethnic minority groups living in the Central Highlands of Viet Nam.

13. Para 35: The sentence "Nevertheless, ... socialism realism remains the official approach promoted by the Government" needs to be deleted since this is not mentioned in any official document of the Government. The SR also acknowledged that this was the opinion of "some" people. Furthermore, also in Para 35, the SR highlighted, "Artists notably enjoy more freedom regarding the methodology they use: since the Doi Moi, they can more freely use methodologies other than the Gorki methodology or socialist realism; they can express their creativity through new styles and different approaches".

14. Paras 36 and 37 do not provide a comprehensive and objective approach concerning difficulties in artistic freedom. The Government of Viet Nam reaffirms that artistic creativity and performance in Viet Nam are carried out freely without limitation as stated by the SR. Under Decree No. 79/02/ND-CP, Para 1 of Article 3 stipulates that Viet Nam "a) Encourages Vietnamese organizations and individuals from all economic sectors to participate in art performances, fashion shows, etc."; Para 1 of Article 12 regulates that "Organizations and individuals organising shows performed by Vietnamese art troupes and performers at lodging establishments, restaurants without selling tickets and collecting money are exempted from licensing"; and Article 15 also provides that "public art performances are exempted from licensing". Issuing permission for the organization of arts performances is only applicable to shows with tickets sold or money collected (Decree No.79/2012/ND-CP). The purpose is to ensure the quality and smooth organization of these shows. This regulation is to protect the rights of the consumers, as well as to enhance the responsibilities of businesses.

15. Moreover, in Para 38, the SR also admits that "The Government has adopted a number of measures to support artists and, since 1995/1996, has allowed a wider participation of private business actors in cultural life, widening the sources of artistic productions".

16. Contents in Para 39 are groundless. Thus, the SR has to use the word "seemingly". In fact, for so many years, artists have been enjoying the freedom to express their artistic creativity through new arts forms, which have been organized frequently, such as performing arts, installation arts, contemporary dance and physical theater. Certainly, any country in the world would try its best to protect its traditional, national, cultural arts features. And such endeavor is totally in line with international standards in order to preserve the intangible heritages of mankind. Specifically for Viet Nam, many traditional arts have been recognized by UNESCO as the world heritages such as the "Space of Gong culture in the Central Highlands", "Ca trù" (song with clappers), "Phu Tho *xoan* singing",

and most recently "Nghe Tinh *Vĩ – Giặm* folk singing", among others. Without the support from the State, these arts would surely had been lost, violated and no longer have their own identities.

17. Paras 44, 52, 53 and 56 cite the 2004 Law on Publication while that Law has been ineffective and replaced by the 2012 Law on Publication, which was adopted in the 4th session of the 13th National Assembly and came into effect since the 1st of July, 2013. The SR is requested to refer to the new Law on Publication to come up with more precise assessments on publication activities in Viet Nam (this new law has not been mentioned at all by the SR in the Report).

18. Para 47: This is an inaccurate assessment from a legal aspect. The Vietnamese authorities do not put under surveillance, harass or detain cultural activists and artists. In the world or in Viet Nam, artists or any other citizens must be legally responsible for their own actions. Some were arrested and convicted, not because they were artists but for their violations of the law. Article 88 of the Criminal Code is a part of the law promulgated by the National Assembly after having been openly discussed and commented by the people. All acts deemed violations of this Article have been clearly stated, therefore, it cannot be said that this is a vague provision.

19. Paras 50 and 51: As stated in Para 36, the Vietnamese Government reaffirms that the Vietnamese legal framework does not require an artwork to be censored before its release.

20. Para 57: Decree 72/2013 was promulgated to promote the use of the Internet in Viet Nam, facilitate people's access to the internet and information, create a fair and transparent environment to protect intellectual property right, while ensuring the safety and security of cyber-network for the common benefits of the whole society. Accordingly, organizations and individuals are allowed to provide information, express their views and opinions but they must be legally responsible for the information provided.

21. Para 58: Competent authorities of Viet Nam are obliged to respect and ensure freedom of cultural activities by the people and only take management measures permitted by laws. Therefore, the assessment that "people trying to establish private publishing houses have faced harassment and arrest, their family members have been kept under special surveillance" is groundless.

22. Para 60: There is no "cultural police" in Viet Nam. Throughout the working visit of the SR in Viet Nam, the Vietnamese Government has created favourable conditions for her to have meetings with artists and cultural communities. The SR's belief that she was under scrutiny by the cultural police during her visit is groundless and based on incorrect information.

23. Para 66: Viet Nam is confused by the judgment that improving the ethnic minority language skills for officials is a way to tighten control over the ethnic minority communities. This is an effort by the Government of Viet Nam to help officials working in the field of ethnic minorities to communicate and understand the expectations of the ethnic communities to formulate appropriate policies in their interests, introduce the government's policies to the ethnic minorities and improve cultural enjoyment among the ethnic communities. This effort is very much welcomed by the ethnic minorities.

24. Para 69: The development of "cultural families" and "cultural villages" could not be understood as a way to "ensure strict compliance with governmental policies in terms of particular ways of life and cultural practices". Practices have shown that the implementation of these movements have successfully raised awareness, increased morality and improved the ways of living of the people. This has contributed to promoting economic development, consolidating cultural institutions, reducing criminal rate, maintaining social order, upholding the value of morality and promoting the model of a wealthy, equal and

happy family. These activities are purely voluntary and they have brought about tangible benefits. This model has been replicated widely throughout the nation and strongly supported by the people.

25. Para 71: Article 25 of the Law no. 28/2001/QH10 on Cultural Heritage has been amended in Para 7, Article 1 of the Amended Law on Cultural Heritage which is numbered 32/2009/QH12. Therefore, the information in the report is irrelevant.

26. Para 72: The information provided in this Para is incorrect and one-sided. The so-called "Duong Van Minh faith" is, in fact, a practice containing unscientific elements that attempts to take advantage of the superstition of some minority Hmong to serve the personal interest of Duong Van Minh, who has been previously convicted for violation of law. The "funeral homes" were removed because they didn't have permission for building. Seven H'mong persons were arrested because they conducted illegal activities violating the Penal Code, not for the construction of their "funeral homes" nor as followers of "Duong Van Minh faith".

27. Para 73: In Viet Nam, there is no "Ministry of Culture and Science". We only have the Ministry of Culture, Sport and Tourism and the Ministry of Science and Technology.

28. Para 75: Eliminating bad practices is an encouraging process. If the practice is good, it should be maintained and promoted. If the practice is outdated and inappropriate in the modern society, the Government's policy is to persuade the people to abandon without imposition or stigmatization. The fact that "some" communities view the elimination of bad practices as a cover of the assimilation policy is untrue. Viet Nam implements a consistent policy of promoting cultural diversity of different areas and ethnicities. We respect the preservation and protection of cultural values, especially those of the ethnic minorities. The Vietnamese Government promulgated Decree no. 05/2011/ND-CP on ethnic affairs, which highlighted the principle of: "Ensuring the preservation of language, script and cultural identity while promoting the custom, habit, traditions and culture of each ethnic group".

29. Para 76: Article 21 of the Law no. 28/2001/QH10 on Cultural Heritage has been amended in and replaced by Para 6, Article 1 of the Amended Law 32/2009/QH12 on Cultural Heritage.

30. Paras 79 and 80: The Report mentioned there were "concerns", "people reported" and "information" that the Vietnamese syntax has been imported into the Khmer language and suggested to establish an independent body to reassess the whole matter. It also reported that there are distortions through phonetic translation of Khmer names into the Vietnamese script. In the Mekong Delta, Khmer people live together with the Kinh people. As such, a convergence of languages occurs naturally. The Vietnamese Government reaffirms that it does not implement any policy to encourage the imports of Vietnamese syntax into Khmer language and that there is no ground to support the establishment of an independent body for reassessment. In addition, the phonetic translation of Khmer names into Vietnamese script has been taking place for hundreds of years (at least since 1820 – 1840 and became popular during colonial rule). It was also a common practice to latinize many phonetics in Khmer and Vietnamese languages.

31. Para 82: The SR stated that overall, minority languages are still taught in schools on a very small scale. In fact, Viet Nam has 53 ethnic minorities but only Chinese, Cham, Khmer ethnic groups have their own spoken languages and scripts, others have only spoken languages but no scripts. The policy of the State of Viet Nam on minority scripts has created favorable conditions for minority cultural researchers to seek for methods of latinization the pronunciation of several ethic languages, similar to what Alexander de Rhode did to the Nom script (an ancient Vietnamese script). This has brought about practical effects, as latinized pronunciation has been in place to facilitate languages for the Hmong, Ede, Gia Rai... This has helped 30 ethnic minorities such as Tay, Thai, Nung,

Mong, Gia Rai, Ede, Ba Na, Xo Dang, Coho, Hre, M'nong... to have their own scripts. However, this process requires much time and efforts, therefore the launch of such a large number of classes taught in minority languages in school at present can be seen as a great endeavor by the Government of Viet Nam.

32. Para 84: The Government of Viet Nam reaffirms that all cases of arrest or conviction, including the two monks and 7 Khmer Buddhist teachers sentenced to prison in September 2013, were due to their violations of Vietnamese law, and not due to the reason of opening Khmer language schools for children.

33. Para 94: There is no Dragon Boat Racing but Ghe Ngo racing festival (Ok Om Bok Festivals).

34. Para 97: The SR stated the Khmer traditional Bay Nui Bull race has been turned into a commercial event with tickets. The Government of Viet Nam provides information as follows: Article 15 of Decision No. 39/2001/QD-BVHTT of August 23rd 2001 by the Minister of Culture and Information on organization of festivals stipulates that:

+ No tickets will be sold as festival passes.

+ In festival's area, if games, performances, cultural shows are organized, tickets can be sold and prices must comply with the provisions of competent financial agencies.

35. All folk festivals are cultural products of regional communities organized and performed by local residents. Funds are contributed by local people while the Government only acts as the regulator and supporter in terms of organizational arrangements to ensure social security and order.

36. Para 98: The SR stated that the Cong drum today is also played on demand for tourists, losing its original cultural significance. The fact that artists playing the Cong drum with a new style is their freedom of expression. The Vietnamese Government's policy is not to influence on how the Cong drum is played, by contrast, we pay due attention to the conservation of Cong instruments in many other activities of ethnic communities in the Central Highlands.

III. The Government of Viet Nam will seriously take note of relevant recommendations. However, some recommendations by the SR are based on one-sided and inaccurate information. Therefore, they are inappropriate to be applied in Viet Nam, specifically as follows:

37. Para 103: The SR encourages the Government not to prescribe the content of history teaching material. This is not a suitable approach for the teaching of history in Viet Nam. The teaching and learning of history, besides its scientific and academic goals of understanding events of the past, also needs to promote national patriotism and unity; this is in line with the moral, historical traditions and culture of Viet Nam. If teachers are allowed to have the freedom to introduce additional materials, it is hard to avoid arbitrary and inaccurate interpretations of history (e.g. colonial rule could be considered as "the enlightened civilization"). Therefore, the prescription of the content of teaching material is to ensure the quality and accuracy in history teaching.

38. Para 104: This recommendation is no longer necessary because on November 28th 2014, the National Assembly of Viet Nam passed a Resolution to develop a general education program with wide array of textbooks to promote the activeness and creativity of teachers, schools. Textbooks will be flexible, suitable to historical, cultural features and

socio-economic conditions of each locality, as well as to specific conditions of each educational institution.

39. Para 109: recommendations in this Para are based on the Publication Law of 2004, while this law has been replaced by the Publication Law of 2012. In addition, regarding the recommendation in Para 109 (g), the State of Viet Nam has introduced a legal system to ensure public security and order in all areas of social life, including in the field of culture. This is a requirement for social management, not only in Viet Nam. Viet Nam does not have "cultural police" to monitor and harass artists, scholars as referred to by the SR, therefore these recommendations are inappropriate.

40. Para 112: the recommendation "the effective participation of relevant groups in the identification, interpretation, development and management of cultural heritage" is unnecessary as the role of local communities in the protection and promotion of cultural heritage is guaranteed under the provisions of Article 5 of the Law on Cultural Heritage, which states, "the State shall conduct a unified management of cultural heritages that belong to the entire population; recognize and protect all forms of collective ownership, joint ownership of the community, private ownership and other forms of ownership with regard to cultural heritages in accordance with the law". In fact, in the course of compiling an inventory, there is direct participation of the communities, groups of artisan and heritage owners.

41. Paras 114 and 115: the SR recommended that measures are needed to ensure that people with cultural heritages are empowered to manage these activities to their best advantage and to enable communities to freely develop their culture. This recommendation is not necessary since it is already guaranteed under Article 17 of the Law on Cultural Heritage No. 28/2001/QH10 amended and supplemented in para 4 of Article 1 of the Law on amendment and supplementation of a number of articles of the Cultural Heritage Law No.32/2009/QH12: "To encourage and create favorable conditions for organizations and individuals to research, collect, store, teach and introduce intangible cultural heritages"; provisions of Article 26 of the Law on Cultural Heritage No. 28/2001/QH10 amended and supplemented in para 8 of Article 1 of the Law on amendment and supplementation of a number of articles of the Law on Cultural Heritage No. 32/2009/QH12 "Facilitate and support funding for creative activity, performance, exhibition, introduction of artisan's products".

42. Para 116: the SR recommended the amendment of Article 22 of the Law on Cultural Heritage in relation to the concept of "bad" or "outdated" practices. However, Article 22 of the Law on Cultural Heritage does not contain concepts of "bad" or "outdated" practices but provides "the elimination of depraved custom detrimental to the cultural life of the people."

43. Para 118: the SR recommended that the Government should continue to support the development of minority scripts. This recommendation is guaranteed under Article 21 of the Law on Cultural Heritage No. 28/2001/QH10 amended and supplemented in para 6 of Article 1 of the Law on amendment and supplementation of a number of articles of the Law on Cultural Heritage No. 32/2009/QH12. Accordingly, the State protects and develops minority languages and scripts through a number of measures as follows: "Research, collect, preserve minority spoken languages and scripts; promulgate rules to transcribe minority spoken languages without scripts; establish special safeguards for spoken languages and scripts at the risk of oblivion" and "conduct the teaching of minority spoken languages and scripts for ethnic minority students under the provisions of the Education Law; promote publication of books, newspapers, radio, television and theatrical programs by using minority languages".

Conclusion

44. The Government of Viet Nam once again welcomes the visit to Viet Nam by the SR, as her positive and objective assessments of Viet Nam's practices to ensure cultural rights. Having understood that this short visit is insufficient for the SR to obtain a comprehensive and accurate view on the situation in Viet Nam, the Government of Viet Nam has provided the above-mentioned information to clarify issues raised by the SR to help complete the report but also show the goodwill and cooperation of the Government of Viet Nam for the SR and the UN Human Rights Council mechanisms. The Government of Viet Nam is willing to further exchange views and collaborate with the SR in any frameworks within the SR's authorities on issues related to Viet Nam or on other issues that Viet Nam may contribute to.

45. The Government of Viet Nam will continue to make further comments and contributions from now to the time when the report will be considered at the 28th Session of the UN Human Rights Council in March 2015. We hope that the views and contributions of Viet Nam will be officially circulated as an addendum to the report.